THE PORT FOLIO
ENLARGED.

BY OLIVER OLDSCHOOL, ESQ.

"VARIOUS, THAT THE MIND
OF DESULTORY MAN, STUDIOUS OF CHANGE,
AND PLEAS'D WITH NOVELTY, MAY BE INDULGED."
COWPER.

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ORIGINAL PAPERS.

FOR THE PORT FOLIO.

THE AMERICAN LOUNGER,

BY SAMUEL SAUNTER, ESQ.

No. II.

I CANNOT insert the following favours from correspondents, without returning them my thanks. I had anticipated the approach of another Saturday, with some degree of dismay; for, with my usual procrastination, I had deferred the performance of my task, till too late a period, and had intended, to have announced that the Lounger, would in future, make his appearance once a fortnight, when an examination of the letter-box relieved me from my anxiety.

The subject of the first letter renders it somewhat doubtful, whether it were intended for insertion in my paper, or for my private admonition only. If in publishing it, I have done wrong, I ask pardon of my correspondent. His letter sets in a strong point of view, some of the difficulties, which attend the writer of a periodical paper; and besides, it helps to fill a column which the indolence of the Lounger, might perhaps have induced him to leave unoccupied.

TO SAMUEL SAUNTER, ESQ.

SIR,

From the earliest appearance of the Port-Folio, I have been in constant expectation of seeing the commencement of a series of essays, upon a plan, similar to that pursued by the periodical writers of Great-Britain. It had always appeared to me, that such a paper would afford the most convenient vehicle, for fugitive remarks, or good-humoured satire on the topics of the day. I was disappointed upon seeing the year close without any such plan having been attempted, and was proportionably gratified, when I saw the second volume commence with an "American Lounger." Now that such an undertaking is begun, although you have my best wishes for its success, I cannot help being apprehensive of its failure. You disclaim, with much propriety, every idea of wounding private feeling; and you declare, and I am sure that I am not disposed, for an instant, to question your sincerity, that "personal satire, or private malevolence shall never pollute your pages." Yet I doubt, pardon my abruptness, whether your assertion will be generally credited. In your speculations upon characters and manners, you will probably be inclined to fix the scene of action, to "give to airy nothing, a local habitation, and a name:" and if you do this, I consider the existence of your paper in jeopardy. It will afford amusement and interest to the curiosity of some readers, and to the malignity of others, to trace out the real or supposed resemblances of the characters which you may draw; and if the scene be laid in any street, from Vine to South in one direction, or from Delaware to Schuylkill in the other; the name of the person supposed to be alluded to, will be confidently "proclaimed upon the housetops," although their names, their persons, and their characters may be equally unknown to you. Even personal vanity, (and who is exempt from this?) will perhaps induce some persons to think themselves brought by you into notice, whom you might deem absolutely below it. Impelled by a feeling similar to that which actuated the artist so pleasantly introduced in one of Peter Pindar's earlier publications, they may perhaps think with him, that it is "better be damn'd than mention'd not at all."

Upon this rock, I fear that your newly-launched bark will most probably split; at the same time, I can with truth say, that I hope, that my prediction will prove a mistaken one; and with wishes for its successful career,

I am sir,
Your friend and well wisher,
MONITOR.

In answer to my correspondent "Monitor," I can only say, that I had, in some degree anticipated the dangers which he points out. He has indeed displayed them before me in a more formidable light, than I had been accustomed to contemplate them. The experiment, however, shall be made: with what degree of success, time only can determine.

TO THE AMERICAN LOUNGER.

SIR,

"THERE is an evil under the sun," of no great magnitude, it must be confessed, but sufficient, nevertheless, to induce the wish that it were corrected. I allude to the habit of interlarding common conversation, with *cant* phrases, from the fashionable dramas of the day. I well remember, that when the Road to Ruin was first exhibited on the American Stage, every one, who aspired to fashionable ease in conversation, introduced the phrase, "That's your Sort," into one sentence at least out of every three, to which he gave utterance. "The Cure for the Heart-ach" deluged the city with young Rapid's characteristic injunction, "Dash on, keep Moving;" and there have recently appeared some symptoms of a general adoption of Ollapod's facetious acknowledgment "I owe you one." This phrase, however, I humbly hope, will not continue in fashion much longer, as it has already descended among the very dregs of the community. Passing, a few evenings since, along Fifth-street, I observed under the wall of the State-house garden, two *black fair ones*, who were engaged in a scene of most vehement altercation. Their clamours were, for some time, equally loud; till at length, one of them suddenly ceased from reply, and coolly walked away. Her enraged adversary followed her retreat; with a repetition of that monosyllable, which is said by the facetious Henry Fielding, to be, of all other, the most offensive to female ears, and the purport of which he conveys by the more modest periphrasis of *she dog*. The other turned round, dropt a courtsey with the most provoking composure; and simply replied, "Thank you *Maaam*" with a drawl upon the *a*, which, if sounds could be measured by feet, would have extended to a yard at least, "*I owe you one.*"

As I look upon you sir, to be in some degree a censor *morum*, an inspector of the minor morals of our city, I must request you to declare, by your censorial authority that the use of these phrases, is prohibited in all polite companies for the future.

I am, sir, yours, &c.
OMICRON.

My correspondent Omicron, shews, by his request, that he entertains by far too exalted an opinion of the extent of my authority. But even if it were a just one, I should be cautious of promulgating the required declaration. Such a step would rob the conversation of several worthy young gentlemen with whom I have the honour of being acquainted, of the only rhetorical figures, with which it is ever embellished; and would at once, condemn them, either to absolute silence, or, to discussion of the state of the weather, and the occurrences of the tea-party of the preceding evening.

THE DRAMA.

FOR THE PORT FOLIO.

WE must now call up in review a *host* of plays, which the temporary suspension of the Port-Folio has compelled us to neglect. Of "Harlequin Invasion" a pantomime, which followed up "The Wedding in Wales," justice obliges us to speak harshly. When we remember that it is the production of Garrick, that when originally represented it was the favorite of the nation, and detained many a gazing croud, we were astonished at the pitiful appearance which it made here. The proverbial patience of a Philadelphia audience was exhausted long before the curtain dropped;

"And welcome sleep reliev'd the drowsy pit"

From a *mangled* entertainment, in which neither *memory* nor *judgment*, nor *fancy* appeared to take any part.

During the holidays, George Barnwell was represented to confirm or correct the principles of the *'prentices* of Philadelphia. Mr. Cain, in the character of the tempted youth, displayed occasional excellence, but, from timidity, indifference, or lassitude, he was too often languid and uninteresting. Mrs. Whitlock acted admirably the part of Millwood, a courtezan of no vulgar class, a strange compound of dignity and meanness, whose infamy excites abhorrence, yet whose talents extort reluctant admiration.

After the tragedy a new pantomimical drama was represented, for the first time, called, Obi, or Three Finger'd Jack. Entertainments of this class, are in general, caculated for the meridian of the holiday frequenters of the theatre only, but this is, by no means, the case with the piece under consideration. It is an interesting dramatic story, well told in action. Obi is said to be the appellation of a species of witch-craft, in use among the negroes; the exercise of which has been, if we mistake not, prohibited in the West-Indies under the severest penalties: as the superstitious reverence connected with it, animated the posses-

sor of it, in the cause of the villainy, and paralized the opposition of the innocent, who were destitute of this mysterious protection. An advertisement containing various extracts on this subject from the writings of Dr. Moseley, is prefixed to the book of the songs in this drama; it exhibits a curious proof of the uniformity of the operations of superstition in all countries. The mysterious rites of Canidia, as related by Horace, the dark spells of the witches in Macbeth as pourtrayed by the pencil of Shakespeare, and the revolting ingredients in the charmed composition of the Obi magician, as specified by Dr. Moseley, all bear striking analogy to each other: Fortified by the awe, inspired by the possession of spells of this kind, and by his own desperate valour, Three Finger'd Jack was long the terror of a certain district in the island of Jamaica. He was at length, suddenly discovered by three negroes, two men and a boy, who had long been engaged in the pursuit of him, and after a desperate conflict was slain. This outline of his real history is faithfully adhered to: But other incidents have been interwoven in the tissue of this piece, which considerably improve its dramatic effect.

This drama commences with the festivities of the negroes on account of the birth-day of Rosa, their master's daughter. An officer, sent in pursuit of Jack, arrives at the plantation, at this instant; and a mutual attachment takes place between him and Rosa. He is shortly after brought in wounded by Jack, whose name excites the terror of all the negroes. Upon his recovery, he goes on a shooting party with the planter, and being accidently separated from him, his steps are unfortunately directed to the vicinity of Jack's retreat; he is again, desperately wounded by him, and dragged into the cave.—The disconsolate return of the planter strongly excites the interest of Rosa, and a proclamation is issued, offering freedom and a pecuniary reward to the destroyer of Jack. This offer stimulates Quashee and Sam, to undertake the achievement; Tuckey the captain's servant begs permission to accompany them, and before they depart they are joined by Rosa in boy's cloathes. In the spot, which had proved so fatal to captain Orford, they are overtaken by a tempest, and Rosa takes shelter in the cave, while her companions continue the pursuit. Jack enters shortly afterwards, and forces her into the interior part of his retreat. He there compels her to perform the offices of a servant in providing the evening meal, and afterwards to sing him to sleep. Her ears are now assailed by a groan from a dungeon in the cavern, and the repetition of her own name. The door is opened, captain Orford is discovered, and a most interesting scene succeeds, in which, after baffling the numerous precautions adopted by Jack to secure his captives, they effect their escape. The piece concludes with the union of Orford and Rosa, and the festivities of the negroes, on account of the death of the ruffian, who had been so long the object of their terrors.

The interest of the story is increased by the songs and musical accompaniments, which are truly beautiful, and often highly appropriate. The scenery is in a style of superior excellence, and it was uniformly well performed. We should, however, be guilty of injustice, did we neglect to notice the striking excellence of Mrs. Snowden, in Rosa. Her action was at once graceful, interesting, and correct. Mr. Fullerton gave to Three-fingered Jack his appropriate force; and in his last conflict with his pursuers, was remarkable for the ferocious energy, with which he sustained it. Mrs. Oldmixon sang as charmingly as usual, and Miss Arnold gave new proofs of increasing vocal excellence.

As we did not scarcely for a moment *listen* to "*The Lover's Vows*," by one Kotzebue, we shall not stop an instant to speak of this jacobin, but hurry away to the comedy called "*Life*, or a Trip to Margate." This, though very well played, seems to be no favourite of the town; and even the pleasant character of Sir Harry Torpid induced but few to exclaim

> "*Life* let us *cherish*,
> Whilst yet the *taper* glows."

In "The Clandestine Marriage," we were charmed with the excellent performance of Mrs. Whitlock, in Fanny, and Mr. Bernard, as the decrepid and gallant nobleman. The mere appearance of the Swiss valet was, in Johnson's phrase, a constant *renovation of merriment;* and Mrs. Shaw, as Mrs. Heidleburg, deserved the most unqualified praise. We never witnessed a more picturesque and faithful exhibition of character.

The first part of Henry IV is one of the most amusing plays of Shakspeare. We always welcome its annunciation with high pleasure, when we anticipate its correct performance. But, in the hands of the present theatrical corps, we confess our strongest, if not our only inducement to witness its representation, was Warren's Falstaff, and this alone beguiles an evening's hour.

We feel much gratified, when the managers hazard the loss of a few dollars, to indulge us with Shakspeare, and duly appreciate their motives. They have too much taste, and too high a regard for the goodly customs of our ancestors, to applaud the blasphemous modern philosophy, and the flat, uninteresting dialogue of Kotzebue, and of Holcroft. But the vitiated state of the times has made the vile forgeries of these philosophers pass current as coin, and the managers must receive it, or become bankrupt. Situated thus, they merit great applause, when they join the contest against the corruptions of an *enlightened* age! But their support is feeble, and prudence bids them take care of themselves.

Mr. Wignell played the king correctly. We praise his exertions, and respect his talents. He brings his whole stock into partnership, and what he can do, is cheerfully done. He seldom needs the prompter's aid.

Mr. Wood, it is our pleasure and our pride to praise. Educated on our boards, he is no exotic. We witness, with increasing satisfaction, the expansion of his powers. We see in him the legitimate successor of Moreton. He has toiled to acquire a slow, distinct, and clear pronunciation, and a graceful action, and his success is great. We would only remind him, that, in trying to speak slow, and articulate distinctly, he is oft inanimate. In the merry frolics of *Hal*, and in the military feats of the Prince of Wales, he discovered a pleasing contrast of powers. We can assure him that the studies of his closet shall be well rewarded, and when we reflect on his amiable deportment in the private circle, the reward shall be bestowed with increased pleasure.

It is unnecessary to speak of Falstaff. Mr. Warren seems to have understood the character of the fat knight "*by instinct*," and to have studied his part "*without compulsion*." Always *correct*, he was *great* in this character. If not the most brilliant, he is the most useful pillar of the stage, and supports his *burthen* well.

Why was the character of Hotspur burlesqued by Mr. Fullerton? He is not the successful adventurer

> "To pluck bright honour from the pale-fac'd moon,"

nor will he obtain it on the boards of a theatre.... His voice is unmusically monotonous, and his action might be mended by an attention to Hamlet's advice to the players. We speak not this in bitterness. If there were no other performer to supply his place, or if he would content himself in a lower character, he might pass the stage doors uncensured. But to see him in the most prominent character, and that character Hotspur, is monstrous. How do these things happen? Did his own vanity, or the want of judgment of the managers deck him with the *shield* of the fiery and impetuous Piercy. We believe it will prove no Ajax shield. Did not the voice of displeasure and contempt on this evening, teach him that he was in a situation, to which he is not entitled by his talents? Why does he represent characters, which the powers of Wignell, or Wood, or Cain, would render captivating?

We have little to say of the "*Honest Thieves*." It contains some humour. It was represented a season or two since. Why then was it announced in the bills as the *first time* of its representation?

POLITICS.

FROM THE NEW-YORK EVENING POST.

AN EXAMINATION OF THE PRESIDENT'S MESSAGE, CONTINUED.

No. VI.

IN answer to the observations in the last number, it may perhaps be said, that the message meant nothing more than to condemn the recent *multiplication* of federal courts, and to bring them back to their original organization: considering it as adequate to all the purposes of the constitution; to all the ends of justice and policy.

Towards forming a right judgment on this subject, it may be useful to those, who are not familiar with the subject, to state, briefly, what was the former, and what is the present establishment.

The former consisted of one supreme court, with six judges, who, twice a year, made the tour of the United States, distributed into three circuits, for the trial of causes arising in the respective districts of each circuit; and of fifteen district courts, each having a single judge. The present consists of one supreme court, with the like number of judges, to be reduced, on the first vacancy happening, to five; of six circuit courts, having three distinct judges each, excepting one circuit, which has only a single circuit judge: and of twenty-two district courts, with a judge for each, as before: In both plans, the supreme court is to hold two terms at the seat of government, and the circuit courts to be holden twice a year in each district. The material difference in the two plans, as it respects the organs, by which they are executed, is reducible to the creation of twenty-three additional judges; sixteen for the six circuit courts, seven for the super-added district courts, and the addition of the necessary clerks, marshals, and subordinate officers of seven courts. This shews, at a single view, that the difference of expense, as applied to the United States, is of trifling consideration.

But here an inquiry naturally presents itself; why was the latter plan substituted to the former, and more economical one? The solution is easy and satisfactory. The first was inadequate to its object, and incapable of being carried into execution.....The extent of the United States is manifestly too large for the due attendance of the six judges in the circuit courts. The immense journies they were obliged to perform, kept them from their families for several successive months in every year; this rendered the office a grievous burden, and had a strong tendency to banish or exclude men of the best talents and characters, from these important stations. It is known to have been no light inducement with one chief justice, whose health was delicate, to quit that office for another, attended with less bodily fatigue; and it is well understood, that other important members of the supreme court were prepared to resign their situations, if there had not been some alterations of the kind which has taken place. It was also no uncommon circumstance, for temporary interrup-

tions in the health of particular judges, of whom only one was attached to a circuit, to occasion a failure in the sessions of the courts, to the no small disappointment, vexation, and loss of the suitor. At any rate, the necessity of visiting, within a given time, the numerous parts of an extensive circuit, unavoidably rendered the sessions of each court so short, that where suits were, in any degree multiplied or intricate, there was not time to get through the business with due deliberation. Besides all this, the incessant fatigues of the judges of the supreme court, and their long and frequent absences from home, prevented that continued attention to their studies, which even the most learned will confess to be necessary for those, entrusted in the last resort, with questions frequently novel, always of magnitude, affecting not only the property of individuals, but the rights of foreign nations, and the constitution of the country.

For these reasons, it became necessary either to renounce the circuit courts, or to constitute them differently: the latter was preferred. The United States were divided into six circuits, with a proper number of judges to preside over each. No man of discernment will pretend that the number of circuits is too great. Surely three states, forming an area of territory equal to that possessed by some of the first powers of Europe, must afford a quantity of business, sufficient to employ three judges on a circuit, twice a year, and certainly not less than this will suffice for the dispatch of business, whether the number of causes be small or great. The inconsiderable addition made to the number of district courts, will hardly excite criticism, and does not, therefore, claim a particular discussion, nor will their necessity be generally questioned. They are almost continually occupied with revenue, and admiralty causes; besides the great employment collaterally given to the judges, in the execution of the bankrupt act, which probably must increase, instead of being diminished.

Perhaps it may be contended, that the circuit courts ought to be abolished altogether, and the business, for which they are designed, left to the state courts, with a right of appeal to the supreme court of the United States. Indeed, it is probable, that this was the true design of the intimation in the message. *A disposition to magnify the importance of the particular states, in derogation from that of the United States*, is a feature in that communication, not to be mistaken. But to such a scheme there are insuperable objections. The right of appeal is by no means equal to the right of applying, in the first instance, to a tribunal agreeable to the suitor. The *desideratum* is to have impartial justice, at a moderate expense, administered "promptly and without delay;" not to be obliged to seek it through the long, and tedious, and expensive process of an appeal. It is true, that in causes of sufficient magnitude, an appeal ought be open; which includes the possibility of going through that process: but when the courts of original jurisdiction are so constituted, as not only to deserve, but to inspire confidence, appeals, from the inevitable inconvenience attached to them, are exceptions to the general rule of redress; where the contrary is the situation, they become the general rule itself. Appeals then become multiplied to a pernicious extent; while the difficulties, to which they are liable, operate, in numerous instances, as a preventive of justice, because they fall with most weight on the least wealthy suitor. It is to be remembered, that the cases, in which the federal courts would be preferred, are those, where there would exist some distrust of the state courts; and this distrust would be a fruitful source of appeals. To say that there could be no good cause for this distrust, and that the danger of it is imaginary, is to be wiser than experience, and wiser than the constitution. The first officer of the government, when speaking in his official capacity, has no right to attempt to be thus wise. His duty exacts of him that he should respectfully acquiesce in the spirit and ideas of that instrument, under which he is appointed.

The detail would be invidious, perhaps injurious; else it would be easy to shew, that however great the confidence, to which the tribunals in some of the states are entitled, there is just cause for suspicion as to those of others; and that in respect to a still greater number, it would be inexpedient to delegate to them the care of interests, which are specially and properly confided to the government of the United States.

The plan of using the state courts, as substitutes for the circuit courts of the union, is objectionable in another view. The citizens of the United States have a right to expect from those, who administer our government, the efficacious enjoyment of those privileges, as suitors, for which the constitution has provided. To *turn them round*, therefore, from the enjoyment of those privileges, in originating their causes to the eventual and dilatory resource of an appeal, is, in a great degree, to defeat the object contemplated. This is a consideration of much real weight, especially to the merchants in our commercial states.

In the investigation of our subject, it is not to be forgotten, that the right to employ the agency of the state courts, for executing the laws of the union, is liable to question, and has, in fact, been seriously questioned. This circumstance renders it the more indispensible, that the permanent organization of the federal judiciary should be adapted to the prompt and vigorous execution of those laws.

The right of congress to discontinue judges, once appointed, by the abrogation of the courts, for which they were appointed, especially as it relates to their emoluments, offers matter for a very nice discussion, but which shall now be but superficially touched.

On the one head, it is not easy to maintain that congress cannot abolish courts, which, having been once instituted, are found in practice to be inconvenient and unnecessary: On the other, if it may be done, so as to include the annihilation of existing judges, it is evident that the measure may be used to defeat that clause of the constitution, which renders the duration and the emoluments of the judicial office co-extensive with the good behaviour of the officer; an object essential to the independence of judges, the security of the citizen, and the preservation of the government.

As a medium, which may reconcile opposite ideas, and obviate opposite inconveniences, it would, perhaps, be the best and safest practical construction to say, that though congress may abolish the courts, yet shall the actual judges retain their character and their emoluments, with the authorities of office, so far as they can be exercised elsewhere than in the courts. For this construction, a precedent exists in the last arrangement of the judiciary. Though the number of the judges of the supreme court is reduced from six to five, yet the actual reduction is wisely deferred to the *happening of a vacancy*. The expense of continuing the salaries of the existing incumbents, cannot, prudently, be put in competition with the advantage of guarding from invasion, one of the most precious provisions of the constitution. Nor ought it to be without its weight, that this modification will best comport with good faith, on the part of government, towards those who had been invited to accept offices, not to be held by an uncertain tenure, but during *good behaviour*.

Weighing maturely all the very important and very delicate considerations, which appertain to the subject, would a wise or prudent statesman hazard the consequences of immediately unmaking at one session, courts and judges, which had only been called into being at the one preceding? Delectable indeed must be the work of disorganization to a mind, which can thus rashly advance in its prosecution! Infatuated must that people be, who do not open their eyes to projects so intemperate....so mischievous! Who does not see what is the ultimate object? "*Delenda est Carthago*"... ill-fated constitution, which Americans had fondly hoped would continue for ages, the guardian of public liberty, the source of national prosperity!

LUCIUS CRASSUS.

A FRIEND TO THE CONSTITUTION.

No. IV.

IN my last number was exhibited an opinion of the court of appeals of Virginia, pronouncing any law which should in any manner deprive of his office a judge commissioned during good behaviour, to be unconstitutional.

On a subsequent occasion, a contest not very different in principle arose in the same state between the legislative and judicial departments, in which the point in controversy was again yielded by the legislature.

In 1792 it was enacted that the judges of the district courts, who are also judges of the general court, should so far exercise chancery jurisdictions as to grant injunctions to their own judgments, and decree finally, in cases of an equitable nature, which originated by way of injunction.

It will be recollected that by the constitution of Virginia, the two houses of assembly, "by joint ballot appoint judges of the supreme court of appeals and general court, judges in chancery," &c.

Under the act just stated, an application was made to the district court at Dumfries for an injunction, which was referred to the general court, and on solemn consideration, was unanimously rejected on the principle that the law was unconstitutional. In giving their opinions some of the judges stated reasons entirely applicable to the subject we are now considering.

Judge Roane observed—"Though a judge is interested privately in preserving his independence, yet it is the right of the people which should govern him; who in their sovereign character have provided that the judges should be independent: so that in fact, it is a controversy between the legislature and the people, though perhaps the judges may be privately interested."

"If there can be judges in chancery who have no commission during good behaviour, their tenure in office is absolutely *at the will of the legislature*, and they consequently are not independent. The people of Virginia intended that the judiciary should be independent of the other departments; they are to judge where the legislature is a party, and therefore should be independent of it: otherwise they might judge corruptly in order to please the legislature, and be consequently continued in office. It is an acknowledged principle in all countries that no man shall be judge in his own cause; but it is nearly the same thing where the tribunal of justice is under the influence of a party. If the legislature can transfer from constitutional to legislative courts all judicial powers, these dependent tribunals, being the creatures of the legislature itself, will not dare to oppose an unconstitutional law." *Judge Tyler.*

"The constitution says that judges in chancery shall be appointed by joint ballot of both houses of assembly and commissioned by the governor during good behaviour;—and for the most valuable purposes—to secure the *independence of the judiciary*. Contrary to this express direction, which admits of no doubt, implication or nice construction, that bane to political freedom, the legislature has made the appointment by an act mandatory to the judges, leaving them not at liberty to accept or refuse the office conferred, which is a right every

citizen enjoys in every other case—a right too sacred to be yielded to any power on earth ; but were I willing to do it as relates to myself, as a judge I ought not, because it would frustrate *that important object before mentioned*, intended by the constitution to be kept sacred for the wisest and best of purposes ; to wit, that justice and the law be done to all manner of persons without fear or reward. For how would the right of individuals stand when brought in contest with the public, or even an influential character, if the judges may be removed from office by the same power who appointed them, to wit, by a statute appointment as in this case, and by a statute disappointment as was the case in the court of appeals.—Might not danger be apprehended from this source when future times shall be more corrupt?" "Let me now compare the law with the constitution in another point ; that of the want of a commission during good behaviour, and the reasons will fully or forcibly apply---When I receive the commission, I see the ground on which I stand---I see that my own integrity is that ground, and no opinions but such as are derived from base motives can be sufficient to remove me from office---in which case whensoever an appeal is made to me by an injured citizen, I will do him justice as far as my mental powers will enable me to discover it, without any apprehensions of an unjust attack."

Judge Tucker, in a very elaborate opinion, which will do credit to his talents so long as it shall be read, thus expresses himself.

"The independence of the judiciary results from the tenure of their office which the constitution declares shall be *during good behaviour*. The offices which they are to fill must therefore be permanent as the constitution itself, and not liable to be discontinued or annihilated by any other branch of the government. Hence the constitution has provided that the judiciary departments should be arranged in such a manner as not to be subject to legislative controul. The court of appeals, court of chancery, and general court, are tribunals expressly required by it ; and in these courts the judiciary power is either immediately or ultimately vested.

"These courts can neither be annihilated nor discontinued by any legislative act, nor can the judges of them be removed from their office for any cause except a breach of their good behaviour.

"But if the legislature might at any time discontinue or annihilate either of these courts, it is plain that their tenure of office might be changed, since a judge, without any breach of good behaviour, might in effect be removed from office by annihilating or discontinuing the office itself."

I must again remind those who may not have attended to the constitution of Virginia, that not only the judges of particular courts are recognized by that instrument, which does not proceed to declare that the judges of such other courts as might be created by the legislature, shall also hold their offices during good behaviour. The constitution also prescribes the manner in which these courts which it recognizes shall be filled, and of consequence no person is a constitutional judge in Virginia, but one appointed in the manner prescribed by the constitution, and to a court named by that instrument.

"If," says judge Roane (now a distinguished member of the supreme court of appeals) "there can be judges in chancery who have no commission during good behaviour, their tenure of office is absolutely at the will of the legislature and they consequently are not independent." It is then a commission during good behaviour (issued according to the constitution) which renders the judges independent of the legislature, and consequently where an office is held by this firm tenure, the holder cannot be deprived of it by a legislative act. It is also to be noticed that the possibility of being deprived of office at the will of the legislature, is, in the opinion of this able gentleman, totally incompatible with judicial independence.

Judge Tyler considers the independence of the judiciary as constitutionally secured by their commissions during good behaviour, and that valuable object he asserts that he "ought not to yield to any power on earth." This independence he deems essential to the rights of individuals and to an upright administration of justice.---With a commission during good behaviour the ground on which he stands is, he says, "his own integrity, and no opinions but such as are derived from base motives can be sufficient to remove him from office."

Judge Tucker states, that "*the independence of the judiciary results from the tenure of their office* which the constitution declares shall be *during good behavior*."—This tenure then places the judge beyond the reach of the legislature. The subsequent reasoning of the gentleman applies with great force. He marks the real distinction between courts, the judges of which are by the constitution to hold their offices during good behaviour, and such as are not noticed by the act of government itself. The former are completely independent... The latter are within the power of the legislature. In Virginia, the judges of the court of appeals, general court, and court of chancery, are alone protected by the constitution: In the government of the United States, the judges of all the inferior courts are recognized by the constitution, and declared to hold their office during good behaviour. Of consequence that reasoning which in Virginia applies to the judges of appeal, of chancery and of the general court, applies in the federal government to the judges of such inferior courts "as Congress may from time to time ordain and establish."

The opinions heretofore quoted are in terms declaratory of the principle that judges ought to be independent of the legislature, and that the constitution, by ordaining the tenure of their office to be during good behaviour, has made them really so. I will subjoin one other opinion, which, though not so positively expressed, is yet sufficiently explicit to be secured from being misunderstood. This opinion is the more valuable, as it is that of a gentleman, from whose judgment the enemies of the independence of the federal judiciary are not in the habit of appealing, and who is appointed to preside over the people of the United States, and to protect their constitution.

In his Notes on Virginia (page 195), after stating the actual despotism of the legislature, in consequence of its assumption of executive and judicial powers, Mr. Jefferson says, "For this reason, that convention which passed the ordinance of government laid its foundation on this basis, that the legislative, executive and judicial departments should be separate and distinct, so that no person should exercise the power of more than one of them at the same time. But no barrier was provided between these several powers. The judiciary and executive members are left dependent on the legislative for their subsistence in office, *and some of them for their continuance in it*."

From the expression here used it is clear that Mr. Jefferson did not consider all the executive and judicial members as dependent on the legislature for their continuance in office. For subsistence he states all to be dependent....for continuance only *some of them*. Then for continuance in office *some are independent of the legislature*. These are not the members of the executive, because the governor is elected annually by the legislature, and the members of the executive council depend for their continuance in office, on the will of the same body, expressed triennially. The judges then are the persons here alluded to, as being, for continuance in office, independent of the legislature. They are only rendered so by the declaration of the constitution, that they shall hold their offices during good behaviour. It is then the avowed opinion of Mr. Jefferson that a judge, the tenure of whose office is by the constitution ordained to be *during good behaviour*, cannot be deprived of that office by the legislature.

Such is the course of thought which until the present awful crisis, has uniformly prevailed in Virginia. Her judges, her legislature, her writers on government, her practical men and her theorists, have concurred by their declarations and their actions, to maintain the same position.....What can have produced in them a revolution so sudden, it is not for me to conjecture. It is impossible that this revolution can be perceived without serious alarm by any person, who is *a friend to the constitution*.

NO. V.

THE constitution of our country has now been inspected, and its mandate on the subject of an independent judiciary has been found too clear to be misunderstood. "The judges both of the supreme and inferior courts," say the people of America "shall, hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office."

To a man who reveres, as does the writer of these numbers, the sacred instrument which binds together the different members of our extensive and growing empire, no other motive than respect for that instrument would be necessary to secure an exact observance of its rules. He would perceive the impracticability of preserving a constitution, the essential principles of which had been openly and intentionally violated.....of longer upholding a fabric, one main pillar of which had been prostrated and trampled under foot....and he would tremble at the consequences of such a procedure.

In thus violently tearing off the veil with which public opinion had covered our frame of government ; in exposing to every eye its susceptibility of wounds, and demonstrating the impunity with which these wounds might be inflicted ; he would perceive an act which must, at one rude blow infallibly demolish all those safe-guards of holy reverence and respect, with which this law, heretofore deemed fundamental, had been carefully surrounded, and which have hitherto protected it from the impious assaults of those who can never cease to wish its destruction.

In this act, which must at the same time divest the constitution of its sanctity, and deprive it of those qualities which endeared it to its friends, he would perceive the certain cause of its dissolution, and of those accumulated miseries which will follow that dreadful event.

To the friends of written constitutions, defining and limiting the powers of the different departments of government, it must be cause of deep and serious regret to discover that the most important principles, expressed with the utmost precision, are incapable of resisting the first shock of party, and must yield to the first popular current that sets against them.

If all were alike the sincere friends of our constitution, if all equally respected mere parchment divisions of power, the views of the writer would have been completely effected by calling the public attention to the sacred text, the authority of which would then have been itself sufficient to secure its own inviolability. But a party respectable for its numbers, and rendered formidable by its energy, the force of which cannot by supposed to have diminished, was from various causes, originally hostile to the adoption of the federal government, and no emolients have been capable of assuaging the irritation at first excited. With the demon-

stration threfore that the measure against which the reasoning of this paper has been directed, is in palpable opposition to the constitution, it may not be entirely unnecessary to mingle some miscellaneous reflections, which will close the observations, designed to be made on this subject.

To the judicial department in every society is committed the important power of deciding between the government and individuals, and between different individuals having claims on each other. The dearest interests of man....life, liberty, reputation and property often depend on the integrity and talents of the judge. All important as is this department to the happiness and safety of individuals, it is from its structure much exposed to invasion from the other departments, and but little capable of defending itself from the attacks which insatiate ambition, wearing the public good as a mask, will make upon it. It wields not the sword, nor does it hold the purse. It stands aloof from both. What is still more decisive, its purity, its decorum of station requires a total abstinence from the use of those means by which popular favour is to be obtained. In a government, constituted like that of the United States, popularity is real power, and those who hold it will always be found too mighty for such as they may choose to attack. It will be forever arranged on the side of those whom the people elect, and their very election evinces that they possess it. Whenever then the representatives of the people enter into a contest with the judges, power is all on one side, and the issue will seldom be favourable to the weaker party. The judiciary can only expect support from the considerate and patriotic, who see, while yet at a distance, the evils to result necessarily from measures to which numbers may be impelled by their present passions.

The judiciary then, not only possesses not that force which will enable it to encroach on others, to aggrandize itself, or to enlarge its own sphere, but is not even able to protect itself in the possession of those rights which are conferred upon it for the benefit of the people. Incapable of acting offensively its real and only character is that of a shield for the protection of innocence....a tribunal for the faithful execution and exposition of the law. This character it will retain unless it be made subservient to the views of one of the other departments of government. Thus debased, it becomes in the hands of the executive or legislature, one of the most terrible instruments of oppression with which man has been ever scourged. "Were the power of judging," says the justly celebrated Montesquieu, "joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor."

Impressed with the force of these eternal truths, the wise and good of America, the enlightened friends of civil liberty and of human happiness, have sought to separate the judiciary from, and to render it independent of, the executive and legislative powers. They have used all the means they possessed to render this independence secure and permanent, for they have laid its foundation in the constitution of their country. Before we tear up this foundation, and trample into ruins the fair edifice erected on it, let us pause for a moment, and examine the motives which led to its formation.

In all governments created by consent; the essential objects to be obtained are, security from external force and protection from internal violence. In arming government with powers adequate to these objects, the possibility of their being turned upon individuals ought never to be forgotten. It is the province of wisdom so to modify them, as not to impair their energies, when directed to the purposes for which they were given, and yet to render them impotent, if employed in the hateful task of individual oppression. The best security, yet discovered, is found in the principle that no man shall be condemned, no pains or penalties incurred, but in conformity with laws previously enacted and rendered public.

But the acknowledgment of this principle would be of no avail without its practical use. To obtain this, the laws must be applied with integrity and discernment to the cases which occur. If the same passions which direct the prosecution dictate its decision, innocence will cease to afford protection, and condemnation will certainly follow arraignment. It is therefore indispensable to individual safety, that the tribunal which decides should, as far as possible, be a stranger to the passions and feelings which accuse: that it should be actuated by neither hope nor fear: that it should feel no interest in the event: and should be under the influence of no motive which might seduce it from the correct line of duty and of law.

It is not in prosecutions instituted by the government only, that such a tribunal is necessary. In civil actions, between man and man, it is no less essential. Justice may sometimes be unpopular, and the powerful may sometimes be wrong. What shall then protect the weak? What shall shield persecuted virtue? What but purity in the judgment seat, and exemption from those prejudices and dispositions, which, for a time, obscure right and tempt to error?

The principle, which could alone preserve this purity, was believed to have been discovered. It was, to remove all those irresistible temptations to a deviation from rectitude, which interest will create, by rendering the judges truly independent ....by making the tenure of their office *during good behaviour*. It was supposed that men, who possessed and valued character, who were selected for the performance of most important duties by persons in high and responsible situations.....by persons, who were elected into those situations for their real or supposed merit, would at least endeavour to do right, when the causes were not powerful indeed, which should mislead them into wrong.

It was supposed that men thus independent would, in a sense of duty, find motives sufficiently strong to support them in an upright administration of justice, against the influence of those who govern, or the still more powerful influence of popular favour. If this expectation should sometimes be disappointed, it must yet be acknowledged that the principle affords the fairest prospect to be furnished by human means, of obtaining a good, so all important to the felicity of man.

It is believed that in no form of government is an independent judiciary more essential than in the republican. To enumerate all the advantages to be derived from it, and all the mischiefs which must grow out of a contrary system, would very much exceed the limits unavoidably prescribed for this paper. It will be sufficient to state some of them, which are most obvious.

In popular governments men probably feel more than in others, a high sense of their own rights. This proud sentiment, wounded by a conviction of injury from those, who ought, with pure hands, to administer only justice and law, must produce a detestation of the existing state of things, which, when extensive, leads to the most serious consequences.

In popular governments, I will not say there is more of party spirit than in others, but I will say, that in them parties are more completely arranged, and more decidedly marked. In them too, the ascendancy of a particular party is of shorter duration, than in those where power is more permanent. The effect of these causes on a judiciary subject to that spirit, cannot be concealed. It becomes a weapon, with which they alternately pursue each other; and instead of being the shield, is converted into the scourge of innocence.

Nor is a dependence of the judges on the legislature in republican governments, less fatal to the rights of individuals, than a dependence on the executive in those which are monarchical. Let the dependence exist, and its consequence will be an improper and injurious subserviency to the will of the superior. Legislative is as heavy as executive oppression, and is the more to be dreaded as it cannot be checked by public opinion, for public opinion is generally with it. When public opinion changes, the governing party changes also, and the persecuted become the persecutors. The instrument of persecution, an enslaved judiciary, is ready for any hand bold and strong enough to seize it. "It will be no alleviation that these powers," (says Mr. Jefferson, speaking of the legislature of Virginia in his Notes page 195) "will be exercised by a plurality of hands and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one." "As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for."

The government of a party continuing for a great length of time the majority, and consequently in power, may gradually soften and assume the appearance of the nation. But where the division is nearly equal, the struggle incessant, and success alternate, all the angry passions of the human mind are in perpetual exercise. The new majority brings with it into power a keen recollection of injuries, supposed, if not real, and is entirely disposed to retort them. Vile calumny, exclusion from social rights, proscriptions and banishments have in democracies, where the ruling party acts without the check of an independent judiciary, been the bitter fruits of this temper. The best safeguard against evils so serious, and it is to be feared, so certain, is a tribunal beyond the reach of these passions, without the judgment of which punishment cannot be inflicted. How is this tribunal to be obtained, but by rendering independent those who compose it? Is it to be expected that if in this war of angry passions, an irritated majority in congress should pursue with unjust vengeance an obnoxious individual, judges dependent on that majority for their continuance in office, will constitute a barrier which shall check its resentments? If in any instance the virtue of the judge should induce him to prefer his duty to his interest, his exertions would be of no avail. He would immediately become the victim of his integrity: by repealing a law or by some other means he would be removed from office, and a successor appointed, inflamed with all the passions which burn in the bosoms of the majority.

In private actions too the same prejudices would prevail. An influential member of the majority in congress could not be in the wrong, should his cause he referred to a man whose political existence may depend on the breath of that member.

It might be some consolation if the mischief stopped here: but it could not. Those popular individuals whose interests decided elections, would participate in the influence of the member they had contributed to place in his seat. It would be necessary for the judge to bear in mind that they too could decide his fate, and that a determination against them might be cause of a removal.

In controversies between an individual of the majority and minority, the case of the impotent and unpopular suiter would be hopeless. His demonstration of his right would avail him nothing, before a judge whose continuance in office might depend on pronouncing a decision against him.

This is no imaginary statement of an impossible case. It is the regular and constant result

of a dependent judiciary. The power on which it depends, will controul and govern its decision, whether this controuling power be in the hands of one or one hundred, its pernicious effects will be the same; for those who feel the power will "forget right." The experience of all ages has established this great and important truth.

Will you then, my fellow-citizens, for the paltry gratification of wreaking vengeance on a party so grossly calumniated and which no longer governs, destroy the constitution of your country, and deprive yourselves of the security resulting from independent judges? Will you establish a principle which must place in the hands of the predominant party for the time being, the persons and the property of those who are divided from them by shades of opinion: which will subject the weak to the powerful, and convert the seat of justice into a tribunal where influence, not law, must rule? Will you render a judiciary, which being constitutionally independent is now a safe and steady check to the encroachments of power and the persecutions of party, a mere instrument of vengeance in the hands of the tyrants of the day? —Will you make the judges what a late ministerial writer, whose calumnies have attracted some attention, has very untruly stated them to be already, a body of men "under the dominance of political and personal prejudice, habitually employed in preparing or executing partial vengeance?"

Patriotism, public virtue, a regard for your own safety and happiness, a just national pride and respect for that constitution on which your national character depends, and which many of you have solemnly sworn to support—all forbid it.

EPITOME OF NEWS.

FOREIGN OCCURRENCES.

———Debate in the imperial parliament, on the preliminaries of peace, has been fervid, eloquent, and argumentative. Lord Hawkesbury and Mr. Pitt have defended the measure, with great ability; and, from the resources of their mighty minds, and from the plausibility of specious rhetoric, have almost

"Made the *worse* appear the *better reason*."

In the upper house, lord Grenville numbers with the opposition; and, in the lower, the "*voice still for war*," is vehemently raised by the undaunted spirit of Mr. WINDHAM. *His* nervous speech we have published at large, in this day's paper. We wished to give, likewise, the speeches of lord Hawkesbury and Mr. Pitt entire, but our limits would not permit. We cannot resist, however, the temptation of quoting the following observations by Mr. Pitt. ....." It would be affectation and hypocrisy in him to say, he had or could change his opinion of the character of the person presiding in France, until he saw a train of conduct, which would justify that change. He would not now occupy the attention of the house, by entering into a discussion of the origin of the war; the unjust aggression which was made upon us, was established by recent evidence, but it was unnecessary to enter into it now, because, upon that subject, the opinion of the house and of the country was fixed. The great object of the war, on our part, was defence for ourselves, and for the rest of the world, in a war, waged against most of the nations of Europe, but against us with particular malignity. Security was our great object: there were different means of accomplishing it, with better or worse prospects of success, and, according to the different variations of policy, occasioned by a change of circumstances, we still pursued our great object, security. In order to obtain it, we certainly did look for *the subversion* of the government, which was founded upon *revolutionary principles*. We never, at one period, said, that, as a *sine qua non*, we insisted upon the restoration of the old government of France .....we only said, there was no government with which we could treat; this was our language up to 1796; but, in no one instance, did we insist upon restoring the monarchy, though, he did not hesitate to acknowledge, that it would have been more consistent with the wishes of ministers, and with the interest and security of this country. He was equally ready to confess, that he had given up his hopes, with the greatest reluctance, and he should, to his dying day, lament that there were not, on the part of the other powers of Europe, efforts corresponding to our own, for the accomplishment of that great work. There were periods, during the continuance of the war, in which they had hopes of being able to put together the scattered fragments of that great and venerable edifice; to have restored the exiled nobility of France; to have restored a government, certainly not free from defects, but built upon sober and regular foundations, instead of that mad system of innovation, which threatened and nearly accomplished, the destruction of Europe."

MR. WINDHAM'S SPEECH.

Mr. WINDHAM, after some preliminary observations, said, that those who opposed the peace had been represented as frantic people who contended that the restoration of the French Monarchy should be the *sine qua non* of peace. This charge, however, could by no means apply to him; because he had never entertained such an idea. Gentlemen therefore, who advanced the charge, had gone farther than they were warranted to go. As to the right of interference in the affairs of France, we had surely a right to interfere for the purpose of preventing that enormous aggrandizement, which was big with danger to ourselves. This had ever been considered, by our wisest statesmen, as an object of the first importance to this country. Whenever a peace had been concluded between two contending parties, it followed, of course, that one party had the superiority over the other, which it was fair and proper to exert for the purpose of ensuring advantageous terms, such terms at least, as should place the country which accepted them in a state of security. And he hoped that the spirit of the English would ever lead them to resist with energy and decision, terms of a different nature, fraught with dishonour, and big with humiliation....But while he disclaimed the wild notions which had been falsely imputed to him, he hoped he should never be found amongst those faithless watchmen of the state, who should seek to lull the people into a false security, and a treacherous repose; but ever act with such as should endeavour to rouse them to a just sense of existing danger, of a danger which threatened them with ruin, with annihilation. It had been the practice of some of the public papers to accuse those who condemned the peace, of being hostile to his Majesty and his Majesty's Government. He, however, had no hostility to his Majesty, nor yet to the ministers; but no dread of misrepresentation should ever deter him from giving his sentiments, freely and fully, respecting a measure which appeared to him calculated to increase our danger instead of diminishing it. He felt it his duty to oppose it; and he would contend, that both in the present Treaty, and in the Convention with the Northern powers, ministers had assumed an humble tone which would lead to consequences dangerous to the existence of the country. The gentlemen who had that night supported the peace, had purposely dissembled the real object of the war. He had ever considered it as a war for *indemnity* and *security*. The enemy had threatened the existence of our liberties and our constitution....To preserve these then, to prevent the diffusion of principles subversive of all the bonds of civil society, to obtain indemnity for the expences which we had been compelled to incur, and security for the future, was the real and avowed object of the war. Ministers had thrown our successes aside; they seemed to have forgotten our victories, and to have lost sight of our conquests. But the recollection of those victories and those conquests would remain to heighten and to aggravate the reflections which must arise from the contemplation of our sacrifices. To have been victorious, and yet to have treated as a vanquished nation, was a galling and mortifying reflection to a British mind. It implied indeed, a contradiction of terms, a confusion of ideas, which no acuteness could reconcile, no strength of understanding dispel. The noble Lord (Hawkesbury) had begun by stating, that the present period was very different from that at which the former negociation took place; that we had originally opposed the principles of France, but latterly we had opposed her power. But in his opinion both led to the same end; and if the power of France threatened the existence of this country, it was as much our interest and our duty to oppose that power, as it was to oppose her principles, when exerted for the same purpose. Mr. Windham then entered into a comparison of the terms of the present Treaty with the terms which were offered to us at Lisle; and clearly shewed that the latter were far preferable to the former....It had been said, that the general language of the country in respect to the peace was, that it was such a peace as every man was glad of, but as no man was proud of. But he hoped and suspected, that this was an epigrammatic expression, and not a true picture. For, *if Englishmen could rejoice at a bad peace, at a peace of which they could not be proud*, the national character was totally lost.

Though the supporters of the peace had prudently forborne to insist on its *glory* they still persevered in representing it as *honourable*. But in what light was it *honourable?* The noble lord had contended, and truly contended, that time and circumstances were necessary considerations, in the conclusion of a treaty; but he was at a loss to perceive the wisdom of that policy, which would reject better terms in a moment of dismay, and accede to worse, in the hour of victory and confidence; there might be a shew of magnanimity in such conduct, but was it wise, was it politic, was it compatible with the real interests of the country? Let us see in what respect it is honourable, as it relates to our allies? How far their interests have been consulted? Ministers have assumed great credit to themselves for their conduct towards our allies. What has been done for them? Turkey was the only power which could be truly said to be in alliance with us. It was said that the integrity of the Sublime Porte had been secured. But is that her opinion? Does she feel secure? A week after this stipulation for her security—a week after this extraordinary instance of our magnanimity had been displayed, Turkey preferred the guarantee of her enemy to that of her ally, and chose to negociate for herself. As we had compelled the French to evacuate Egypt, both the security of Turkey and our own required that we should have retained in our possession some strong fortress, garrisoned by British troops. Without this precaution, what was there to prevent the French from returning to Egypt? At the very moment when we magnanimously stipulated for the evacuation of that country, there was not a French soldier remaining in it, (thanks to General Hutchinson, whose military skill, whose firm perseverance, and whose manly courage could only be exceeded by his modesty), who was not a prisoner to the English. As to the integrity of Naples, that was as insecure as Turkey; for though the French troops had evacuated a part of the Neapolitan territory, what was to prevent them from returning, especially, as they retained possession of the Cisalpine Republic? "I wish to know what is to pre-

vent the French, who evacuated Naples to-day, (Tuesday) from re-entering it on Thursday, the distance from the Cisalpine Republic not being more than sixty miles?" Such is the situation, such the security, such the integrity of Naples.

In casting our eyes over the map of Europe we look in vain for the kingdom of Sardinia....The territories of his Sardinian majesty live only in our memory. In the Mediterranean, he had only the little island of Sardinia left, for the security of which he was solely indebted to the protection of our fleet; a protection, which he would lose the moment the definitive treaty should be signed. The next of our allies, the integrity of whose dominions exhibits an illustrious proof of our magnanimity, is Portugal. On this subject, he had endeavoured to obtain information; but he had not been sufficiently successful to speak with decision on it. He adverted to the treaty of Badajos, and to the cession of a portion of the Portuguese territory in the Brazils; and he asked whether it was to be understood that our treaty with France sanctioned that cession? Portugal, like Naples, had been secured by us, in the integrity of her possessions; and our magnanimity on this occasion had been loudly vaunted by the noble lord, because those two powers had formed separate treaties with the enemy. But were not those treaties the effect of compulsion on the one hand, and the results of conquest on the other? Should we have been justified in declaring war against Portugal and Naples for yielding, against their will, to dire necessity? If no blame, then, attached to Portugal, if she ought really to be considered as our ally, as no human being could suspect her of possessing the ability to resist her enemy, there could not be the smallest reason for any diminution of our attachment to her. How have we provided for her security? The preliminary articles will tell us how. Mr. Windham then took a large bundle of papers out of his pocket, but begged the house not to be alarmed, as he only meant to read about half a dozen lines. He then read the following articles of the preliminary treaty.

V. Egypt shall be restored to the Sublime Porte, whose dominions and possessions shall be secured in their integrity; such as they were before the war.

VI. The territories and possessions of her most faithful majesty shall also be maintained in their integrity.

France, as far as any treaty can bind her, has concluded a peace with Portugal; but on what terms? She has taken from her Olivenza and the adjoining territory, which Spain had long coveted, and for which nothing more was required than to express a wish, in order to obtain it from France. France, at the same time, took for herself a portion of the Brazils, which gave her the command of the river Amazons, and the whole of the adjacent coast. Mr. Windham quoted Monsieur de la Condamine in order to shew the advantage which France would derive from the possession of this tract of country in addition to what she already enjoyed in the proximity of Dutch Guiana. Is this the mode of guaranteeing the possessions, of securing the integrity of a faithful ally? If *integrity* and *dismemberment* be synonimous terms, then, indeed, the assertion may be true. In allusion to the term *honourable* which the noble lord has absurdly applied to the peace, in the speech from the throne, every man must feel that no peace was safe that was not honourable, and that no peace was honourable, which was not safe; but, unfortunately, this peace was neither safe nor honourable; nor could any peace be honourable which gave us territories that did not belong to the power by whom they were given.

The conduct of our government in the negociation at Lisle was very different: they did what was wise and proper to attain peace for the good of the country. They selected certain points of importance, which it was necessary for the preservation of that honour, to insist upon. He was surprized to hear certain expressions, which had fallen from the noble lord, relative to the acquisitions we had made by the present peace, which he contrasted with Lord Malmesbury's *project*, the wisdom of which he extolled. We should have been fully justified in the retention of Ceylon, the Cape, and Cochin, for the more effectual defence of our Eastern empire. His mind was not at all satisfied with the situation in which the Cape was left by the Treaty. We had ceded a port which might become a great annoyance to our trade.

The Cape furnished, a military station of vast importance in the event of a sudden war, not preceded by a proclamation. The Marquis of Cornwallis, in his return from India, had strongly pressed the necessity of retaining Cochin, and the Cape; or if only one of them could be retained, the Cape in preference to Cochin.—Though Ceylon was an important settlement, Cochin, on the Western side of the Peninsula, was one of the strongest military frontiers in India. In the event of a war, a fleet might sail from the Cape and arrive at Cochin before any person in India could know of its arrival, and before any person in England could be apprized of its sailing.—He might possibly be told, that our merchantmen were advised to avoid the Cape: but the importance of that settlement was not so great as represented; and that our ships might touch at the Brazils.

The settlement which the French had acquired in the Brazils, would, in that case, give additional importance to France. The Cape and Cochin were insisted on by lord Malmesbury, at Lisle, as points from which we would not depart; and these were now given up, from that want of vigour, spirit, and prudence, which mark our negociation.

He concluded by remarking, that such a peace as had been concluded, could not last long. If France should declare war in a twelve month, where would we be with our fleets dismantled, and our armies disbanded? Would not such a war shake our country to its centre? Feeling as he did, that the peace was neither honourable to our allies, nor safe to ourselves, he could not but oppose the motion.

DOMESTIC.

——The Public papers with great pomp announce the safe delivery of the great *Cheese* at Washington. The inhabitants of *Cheshire*, an obscure town in one of the western counties of the state of Massachusetts, actually accompanied their cheesemonger compliment with the following address.

The greatest Cheese in America, for the greatest Man in America.

SIR,

Notwithstanding we live remote from the seat of national government, and in an extreme part of our state; yet we humbly claim the right of judging for ourselves.

Our attachment to our national constitution is strong and indissoluble. We consider it a description of those powers, which the people have submitted to their magistrates, to be exercised for definite purposes, and not a charter of favors, granted by a sovereign to his subjects. Among its beautiful features, the right of free suffrage, to correct all abuses....the prohibition of religious tests, to prevent all hierarchy....the means of amendment, which it contains within itself, to remove defects as far as they are discovered, appear the most prominent. But for several years past our apprehension has been, that the genius of the government was not attended to in sundry cases; and that the administration bordered upon monarchy: Our joy, of course, must have been great, on your election to the first office in the nation: having had good evidence, from your announced sentiments and uniform conduct, that it would be your strife and glory to turn back the government to its virgin purity. The trust is great! The task is arduous! But we console ourselves, that the Supreme Father of the Universe, who raises up men to achieve great events, has raised up a Jefferson for this critical day, to defend Republicanism, and baffle all the arts of Aristocracy.

Sir, we have attempted to prove our love to our President, not in words alone, but in deed and truth. With this address, we send you a CHEESE, by the hands of Messrs. John Leland, and Darius Brown, as a pepper-corn of the esteem which we bear to our chief magistrate, and as a sacrifice to Republicanism. It is not the last stone in the Bastile, nor is it of any consequence as an article of worth; but as a free will offering, we hope it will be received. The Cheese was not made by his lordship, for his sacred majesty; nor with a view to gain dignified titles or lucrative offices; but by the personal labour of free born farmers (WITHOUT A SINGLE SLAVE TO ASSIST) for an elective President of a free people; with the only view of casting a mite into the scale of democracy.

The late triumphant return of Republicanism has more animated the inhabitants of Cheshire, to bear the burden of government, and treat the characters and persons in authority with all due respect, than the long list of alien—sedition—naval and provisional army laws ever did.

Sir, we had some thoughts of impressing some significant inscription on the Cheese; but we have found such inconveniency in stamps on paper, that we chose to send it in a plain republican form.

May God long preserve your life and health for a blessing to the United States, and the world at large.

Signed by the Committee, in behalf of all Cheshire.

PRESIDENT'S REPLY.

I concur with you in the sentiments expressed in your kind address on behalf of the inhabitants of the town of Cheshire, that the Constitution of the United States is a charter of authorities and duties, not a charter of rights to its officers; and among its most precious provisions are the right of suffrage, the prohibition of religious tests, and its means of peaceable amendment. Nothing ensures the duration of this fair fabric of government so effectually as the due sense entertained by the body of our citizens, of the value of these principles and their care to preserve them.

I received with particular pleasure the testimony of good will with which your citizens have been pleased to charge you for me; it presents an extraordinary proof of the skill, with which those domestic arts, which contribute so much to our daily comfort, are practised by them, and particularly by that portion of them most interesting to the affections, the care, and the happiness of man.

To myself this mark of esteem from freeborn farmers, employed personally in the useful labours of life, is peculiarly grateful, having no wish but to preserve to them the fruits of their labour: their sense of this truth will be my highest reward.

I pray you, gentlemen, to make my thanks for their favour acceptable to them, and to be assured yourselves of my high respect and esteem.

THOMAS JEFFERSON.

MISCELLANEOUS PARAGRAPHS.

FOR THE PORT FOLIO.

One Lewis Du Pre, a French philosopher, has, it seems, discovered the *perpetual motion*, and, with all the eagerness of an enthusiast, *hastens* to impart the blessing of the discovery to congress, who understand perpetual *motion*, much better than Mr. Du Pre. Mr. Du Pre cannot now be *quiet*, and be satisfied even with the old phrase, descriptive of this chimera, for he calls it the *perfect motion*, and insists upon it, that *perpetual* is "*vulgar*." He declares, that it has pleased God, for purposes most extensively benevolent, to impart to him this discovery. He addresses "the *government* of

the United States, in congress assembled," in the soothing vocative of "*dear* friends," and calls upon their republican *patriotism*, to obtain from the *critical casket*, where it remains deposited, the precious bounty. All this, though very "bald, disjointed chat," might possibly pass for very good *republican* sense and reason, did not this insane projector unfortunately talk, in his "memorial," something about the *supereminently favoured land of Columbia*.

—

Throughout the United States, quiet men, and haters of democratic innovation are stunned by the frantic uproar of the republicans in congress, clamouring for an abrogation of the judiciary system. Mr. Brackenridge, a man so new, that few know his "local *habitation*, or his *name*," has made, in favour of a repeal of salutary law, a speech, conspicuous for its falsity of assumption, and for its inconclusiveness of logic. Governeur Morris, and Uriah Tracy, Esquires, have replied, with great eloquence to the flimsy arguments of the democratic senator, who, in his history of the king's courts in Westminster-Hall, and the course of legal polity in England, betrays a degree of ignorance, at which the meanest Tyro in BLACKSTONE would be ashamed. The speech of Mr. MORRIS, we have read with great delight; and we feel no hesitation in declaring, that it is in no wise inferior to the parliamentary eloquence of St. Stephen's chapel. The speech of Mr. Tracy, of Connecticut, has been pronounced, by a correct judge, "one of the most impressive, argumentative, and solemn speeches, that ever attracted the attention of the house."

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An empirical advertisement of some vile medley of nauseous drugs, professing to cure a number of disorders, the most diverse in their nature and situation, begins thus: "The secret sought in all ages, for the good of mankind, is at last found out."

—

A tallow chandler, lately deceased, in London, was said to have left a fortune of one hundred thousand pounds. Surely this man, remarks a wag, did not hide his light under a bushel.

—

When one reflects upon the mummery of the *Cheshire* simpletons, over their Mammoth cheese, and the extreme weakness of the whole transaction, it forces one to remember a descriptive line of POPE, and to be confident that this political, or rather *Indian* gift, is

"A mere white curd of *asses'* milk."

—

The *vice* president of the United States seems to prefer pleasure at New-York, to politics at Washington. Dear *liberty* is emphatically the motto of this gay officer, who, careless of his *little senate*, lingers, as long as he can, in the bower of delight,

"And makes *his* heaven in a lady's lap,
And witches women with his looks and words."

—

The Walpole editor never omits an opportunity to play upon words. From the following it appears, that he can*not* refrain:

A southern paper records the recent marriage of a Mr. *Nott*. The lady, to whom he has given his hand, in an affair of so great moment as matrimony, probably gave the matter previous and due consideration; she might, with some propriety, ponder the opening of the celebrated soliloquy on the immortality of the soul,

"To be, or NOT to be, that is the question."

The Editor of "The Farmer's Museum," commenting upon the rude and vicious essays of Levi Lincoln, attorney general of the United States, has the following pleasant remark:

"A writer in the Massachusetts Spy, and more lately in the National Ægis, a violent, democratic paper, printed at Worcster, in Massachusetts, is writing a series of essays, over the signature of "The Farmer," the intent of which is, to degrade the acts of the former administration, and commend those of the new. The author of them, it is satisfactorily ascertained, is the attorney general of the United States. The clergy of New-England, in some parts of the writer's later lucubrations, appear to be the faultless victims of his resentment..... These writings are re-published in many papers, and, from the high official situation of their author, perhaps, more than from their intrinsic merit, give rise to much newspaper discussion. A writer in the Columbian Centinel, with the signature of "Sulpicius," has entered the lists with "The Farmer," and, though he does not assume the title of a husbandman, yet he appears to understand a branch of the business of one. From the "energies" which he has already displayed in these essays, the attorney general will probably find, that he is fully equal to "The Farmer," in "*thrashing*" and "*dressing*."

—

A member of congress, in a letter to the Editor, dated Washington, January 15, says:

"We have been constantly acting "Much Ado about Nothing," ever since congress convened; and happy would it be for our country, if we should confine ourselves to comedy. There is too much reason to fear, that *the present company of actors* will not be left to the *choice* of parts, which will afford but miserable *profits* to them, and sorry amusement to the *spectators*. But I will not anticipate evil; sufficient, certainly for this day, are the evils thereof."

—

Though languishing with a pulmonary complaint, Mr. TRACY, a senator from Connecticut, has displayed all the strength of a manly mind, on the debate, relative to the mad project of abolishing the present judiciary system. He concludes a wise and brilliant speech, in the following pathetic style:

"I am strongly impressed with the magnitude of this subject; perhaps the whims of a sick man's fancy have too much possessed me, to view it correctly; but, sir, I apprehend THE REPEAL OF THIS LAW WILL INVOLVE IN IT THE TOTAL DESTRUCTION OF OUR CONSTITUTION. It is supported by three independent pillars, the legislative, executive, and judiciary; and, if any rude hand should pluck either of them away, the beautiful fabric must tumble into ruins.

"The judiciary is the centre pillar, and a support to each, by checking both; on the one side is the sword, and, on the other, the wealth of the nation, and it has no inherent capacity to defend itself. These very circumstances united, may provoke an attack, and whichever power prevails so far, as to vest in itself, directly or indirectly, the power of the judiciary, by rendering it dependent, is the precise definition of tyranny, and must produce its effects. The Goths and Vandals destroyed not only the government of Rome, but the city itself; they were savages, and felt the loss of neither; but, if it be possible there can be an intention, like the son of Manoah, with his strength, without his godliness, to tumble the fabric into ruins, let it be remembered, it will crush, in one undistinguished ruin, its perpetrators, with those whom they may call their political enemies.

"I most earnestly entreat gentlemen to pause and consider; I apprehend the repeal of this act will be the hand writing on the wall, stamping *Mene Tekel* upon all we hold dear and valuable in our constitution. Let not the imputation of instability, which is cast upon all popular bodies, be verified by us, in adopting laws to-day, and repealing them to-morrow, for no other reason, but that we have the power, and will exercise it."

—

A correspondent, who remembers the most popular maxims of Dr. Franklin, who has the *pence table* by heart, and knows all the squares of multiplication, is exceedingly alarmed, lest congress, in the debate on the *quantum* of reward due to the gallant STERRET, for his exploits in the Mediterranean, should lose sight of *economy*. Our saving correspondent, who, to be sure, only echoes the voice of most of our misers, is of opinion, that a *small* silver medal, of the *value of nine pence*, will be enough for our national gratitude to bestow on maritime merit, and that we should never think of measuring talents or virtue by any thing, except by a joiner's rule, or that liberal and classical maxim, "a pin a day is a groat a year."

—

The great Dr. JOHNSON sometimes did not think a pun unworthy of his colloquial powers. The following example of his success in this way, has never before been cited in this country:

The conversation turning one night, at the club in Essex-street, on the injury our language sustained, by the abreviations made by the poets, Dr. Burney was observing, that he knew a literary lady, who was, in some instances, in the contrary extreme, and often added a letter too much, particularly in all words ending in *e*, as agreeable*e*, infalliblee, &c. Why did she take such unnecessary trouble? says one of the company. "Nay, sir," says Johnson, "it could be no *trouble* to her; on the contrary, she appears to be very much at her *e e*'s."

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The consequences of the new theory in politics begin to appear, with vengeance, in the vicinity of Petersburg, in Virginia. The negroes, have risen to the number of five hundred, with an intent to cut the throats of their *republican* masters. Happily for the latter, this African plot was discovered; but it behoves southern visionaries to look well to consistency, and take care, while they are prating about *patriotism* and liberty, to remember, that their sable vassals once had a *country* and *equal rights*.

—

That is unquestionably honest praise, which drops unwillingly from the tongue or pen of our foes. Of the late speech of GOVERNEUR MORRIS, even the biassed editor of the National Intelligencer remarks, that it was one of the most splendid specimens of eloquence, ever delivered in a deliberative assembly.

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We rejoice to read the New-York proposals for re-publishing that scarce and profound work, THE FEDERALIST. It is the best comment on the constitution, which the world has yet witnessed.

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